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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 218

[Docket No. 111019636-2033-02]

RIN 0648-BB53

Taking and Importing Marine Mammals: U.S. Navy Training in 12 Range Complexes and U.S. Air Force Space Vehicle and Test Flight Activities in California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Between January 2009 and May 2011, pursuant to the Marine Mammal Protection Act (MMPA), NMFS issued twelve 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training and associated activities. Additionally, in February 2009, pursuant to the MMPA, NMFS issued 5-year regulations to govern the unintentional taking of marine mammals incidental to U.S. Air Force (USAF) space vehicle and test flight activities from Vandenberg Air Force Base (VAFB). These regulations require the issuance of annual “Letters of Authorization” (LOAs).

Since the issuance of the rules, the Navy realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of sound sources that they use. NMFS now amends the regulations for the affected Navy training ranges to provide for additional flexibility and allow for LOAs with longer periods of validity.

Similarly, NMFS now amends the regulations issued to VAFB in February 2009, to allow for greater flexibility regarding the types and amounts of missile and rocket launches that the USAF conducts.

DATES: Effective on [insert date of publication].

ADDRESSES: Regarding the Navy action, electronic copies of the Navy's LOA applications, NMFS' Records of Decision (RODs), and NMFS' proposed and final rules and subsequent LOAs; and regarding the USAF action, electronic copies of the USAF's LOA application, NMFS' Environmental Assessment and Finding of No Significant Impact, and NMFS' proposed and final rules and subsequent LOAs, and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephoning the contact listed here (see FOR FURTHER INFORMATION CONTACT), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison or Candace Nachman, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, a

notice of proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103.

The National Defense Authorization Act (NDAA) (Public Law 108-136) removed the “small numbers” and “specified geographical region” limitations, and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (section 3(18)(B) of the MMPA):

- (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
- (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Between January 2009 and May 2011, pursuant to the MMPA, NMFS issued 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training and associated activities conducted in the Hawaii Range Complex (HRC), the Southern California (SOCAL) Range Complex, the Atlantic Fleet Active Sonar Training (AFAST) Study Area, the Jacksonville (JAX) Range Complex, the Virginia Capes (VACAPES) Range Complex, the Cherry Point (CHPT) Range Complex, the Naval Surface Warfare Center Panama City Division (NSWC PCD), the Mariana Islands Range Complex (MIRC), the Northwest Training

Range Complex (NWTRC), the Naval Under Sea Warfare Center (NUWC) Keyport, the Gulf of Mexico (GOMEX) Range Complex, and the Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA). Additionally, in February 2009, pursuant to the MMPA, NMFS issued 5-year regulations to govern the unintentional taking of marine mammals incidental to USAF space vehicle and test flight activities from VAFB in California. These regulations, which allow for the issuance of annual LOAs for the incidental take of marine mammals during the specified activities and described timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

Currently, with the exception of the GOA TMAA regulations (which allow for biennial LOAs), these rules state that LOAs must be renewed annually. To date, the Navy has complied with this requirement, and NMFS has issued annual LOAs to the Navy for activities on its ranges; however, in order to alleviate some of the administrative burden associated with processing annual LOAs, the Navy has requested that NMFS revise the current regulations to allow for LOAs with longer periods of validity. NMFS' regulations implementing section 101(a)(5)(A) through (D) of the MMPA do not limit the period of validity for LOAs to one year, and NMFS relied on this authority when regulations were promulgated for the GOA TMAA that allow for LOAs to be issued on an annual or biennial basis (76 FR 25480, May 4, 2011). The specific language found in the general regulations governing small takes of marine mammals incidental to specified activities states that, "Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request" (50 CFR 216.106(c)). With respect to revising the timing of LOA renewals, the period of validity for the

LOAs can be extended past one year, but will not exceed the time remaining on the 5-year rule. For example, under the revised regulations, if the Navy requested a multi-year LOA for AFAST in 2012, the LOA could only be valid for a maximum of two years because the 5-year rule expires in 2014. Other factors may be taken into consideration when determining the period of validity for a multi-year LOA, such as the degree of advanced planning regarding future training or exercise schedules and the details concerning the amount of activity and marine mammal occurrence documented in the previous year's monitoring and exercise reports. The regulations still: (1) require the Navy to submit annual monitoring and exercise reports; (2) require that NMFS and the Navy hold annual monitoring and adaptive management meetings; and (3) allow for LOAs to be changed at any time, as appropriate, based on the availability of new information regarding military readiness activities or the marine mammals affected.

In addition, these rules as first issued (a subset have been modified) quantified the specific amounts of individual sound source use that would occur over the course of the 5-year rules, and indicated that marine mammal take could only be authorized in an LOA incidental to the source types and amounts described. No language was initially included expressly allowing for deviation from those precise levels of source use, even if the total number of takes remained within the analyzed and authorized limits. Since the issuance of the rules, the Navy realized that their evolving activities, which are linked to real world events, necessitate greater flexibility in the types and amounts of sound sources that they use. In response to this need, when the Navy requested incidental take authorization for the most recent area (GOA TMAA), NMFS included language explicitly allowing for greater flexibility in both source amount and type. Recently, NMFS amended the HRC, SOCAL Range Complex, AFAST, VACAPES, and JAX regulations

to explicitly allow for greater flexibility in the types and amount of sound sources that they use (76 FR 6699, February 8, 2011, and 76 FR 30552, May 26, 2011). The language contained in the regulatory text for the interim final rules issued on February 8, 2011, and May 26, 2011 (76 FR 6699 and 76 FR 30552) remains unchanged from what was initially published. Through this final rule, NMFS now finalizes the aforementioned interim final rules without changes and amends the regulations for the remaining Navy training and RDT&E ranges to allow this same flexibility and ensure consistency.

The USAF regulations for activities at VAFB initially quantified the specific amounts of missiles and rockets that could be launched over the course of the 5-year rule and indicated that marine mammal take could only be authorized in an LOA incidental to the amounts described. No language was initially included expressly allowing for deviation from those precise launch levels, even if the total number of takes remained within the analyzed and authorized limits. Since the issuance of the rule, the USAF realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of missile and rocket launches that they conduct. NMFS now amends the regulations issued to VAFB in February 2009, to allow for such flexibility.

Summary of the Navy Modifications

Multi-year LOAs

On May 4, 2011, NMFS issued 5-year regulations governing the taking of marine mammals incidental to training activities conducted in the GOA TMAA (76 FR 25480). These regulations allow for the issuance of annual or biennial LOAs (only annual LOAs had been allowed for in the previous Navy rules issued), but retain the annual reporting and meeting

requirements.

After the issuance of the 2011 GOA TMAA rule, the Navy inquired about proposing amendments to the previously implemented Navy rules that would enable NMFS to renew LOAs for other training and RDT&E ranges on a multi-year basis. The ability to issue multi-year LOAs reduces administrative burdens on both NMFS and the Navy. In addition, multi-year LOAs would avoid situations where the last minute issuance of LOAs necessitated the commitment of extensive resources by the Navy for contingency planning.

This modification amends the regulations to allow the issuance of multi-year LOAs for all 12 Navy range complexes: HRC, SOCAL, AFAST, JAX, VACAPES, CHPT, NSWC PCD, MIRC, NWTRC, NUWC Keyport, GOA TMAA and GOMEX. The regulations for these range complexes currently limit the period of validity for LOAs to 1 year (2 for GOA TMAA) and the Navy must request renewal of LOAs annually (biennially for GOA TMAA). Although the amendments can increase the period of validity for LOAs, the regulations retain the annual reporting and adaptive management meeting requirements that ensure NMFS is able to evaluate the Navy's compliance and marine mammal impacts with the same attention and frequency. In addition, a new LOA can be issued to incorporate any needed mitigation or monitoring measures developed through adaptive management, or if the Navy proposes changes to their activity within a given annual reporting period.

Interannual Flexibility (Source Type and Amount of Use)

With respect to the second modification regarding the types of sources for which incidental take is authorized, in some cases the Navy's rules only identified the most representative or highest power source to represent a group of known similar sources. The Navy

regularly modifies or develops new technologies, which often results in sound sources that are similar to, but not exactly the same as, existing sources. In order to address these source modifications and the development of new technologies, NMFS includes new regulatory language designed to allow for more flexibility by authorizing take incidental to the previously identified specific sound source or “similar sources” (i.e., those that have similar characteristics to the specific sources and do not change any of the underlying analysis, which NMFS would evaluate and verify upon receipt of an LOA application containing a description of the new similar sound source). In the February 8, 2011, modification to the HRC, SOCAL, and AFAST rules and the May 26, 2011, modification to the VACAPES and JAX rules, NMFS increased the flexibility of the regulations by inserting language that explicitly allows for authorization of take incidental to the previously identified specified sound sources or “similar sources” (with similar characteristics that do not change any of the underlying analyses). The language contained in the regulatory text for the interim final rules issued on February 8, 2011, and May 26, 2011 (76 FR 6699 and 76 FR 30552) remains unchanged from what was initially published. NMFS now finalizes these two interim final rules without changes and inserts similar language in the following Navy rules: CHPT; NSWC PCD; MIRC; NUWC Keyport; GOMEX; and NWTRC.

Finally, regarding amounts of sound source use, the regulations only allow for the authorization of take incidental to a 5-yr maximum amount of use for each specific sound source, even though in most cases our effects analyses do not differentiate the impacts from the majority of the different types of sources. Specifically, although some sonar sources are louder or generate more acoustic energy in a given amount of time, which results in more marine mammal takes, we authorize total takes but do not differentiate between the individual takes that result

from one source versus another. This final rule amends the Navy rules to allow for inter-annual variability in the amount of source use identified in each LOA. For example, in one year, the Navy could use a lot of one source and a little of another, and the next year those amounts could be reversed; however, the amount of inter-annual variability cannot result in exceeding the total level of incidental take analyzed and identified in the final rules, and the taking cannot result in more than a negligible impact on affected species or stocks. Language of this nature was included in final regulations governing the authorization of take incidental to the Navy's training activities in the Mariana Islands and Northwest Training Range Complexes, which were issued in 2010. NMFS issued interim final rules amending the HRC, SOCAL Range Complex, AFAST, VACAPES, and JAX regulations by adding language of this nature to increase operational flexibility in those range complexes (76 FR 6699, February 8, 2011, and 76 FR 30552, May 26, 2011). However, this language has not been adopted in the remaining Navy rules and NMFS now finalizes the aforementioned interim final rules and includes language of this nature in the regulations governing the authorization of take incidental to the additional Navy range complexes not previously addressed by either the final rules or interim final rules mentioned above.

These regulatory amendments do not change the analyses of marine mammal impacts conducted in the original final rules. This is assured and illustrated through: (1) the Navy's submission of LOA applications for each area, which include take estimates specific to the upcoming period's activities (i.e., sound source use); (2) their subsequent annual submission of classified exercise reports, which accurately report the specific amount of use for each sound source over the course of the previous year; and (3) their annual submission of monitoring

reports, which describe observed responses of marine mammals to Navy sound sources collected via visual, passive acoustic, or tagging methods. Together, these submissions allow NMFS to accurately predict and track the Navy's activities to ensure that both NMFS' LOAs, and the impacts of the Navy's activities on marine mammals, remain within what is analyzed and allowed under the 5-year regulations.

Summary of the USAF Modification

In the 5-year regulations issued to the USAF in February 2009, NMFS authorized up to 30 missile launches and up to 20 rocket launches annually from VAFB (74 FR 6236, February 6, 2009). Those regulations analyzed potential impacts from many different types of missiles and rockets, such as the Atlas, Delta, Falcon, and intercontinental ballistic missiles. At the time of issuance of the regulations to the USAF, the Falcon was not yet ready for launch, but it was anticipated that the first launch of such a rocket would occur around August 2009. Information related to this rocket type was analyzed in both the proposed and final rulemaking documents. The Falcon has not yet been launched from VAFB, and it is anticipated that the first launch will occur in late 2012 or early 2013.

In order to accommodate the necessary launches of the Falcon rocket, the USAF has indicated that it needs to reassign the amount of the 50 total launches allowed annually. Instead of the 30 missile and 20 rocket launches currently authorized per year, the USAF has requested that they be permitted to conduct 15 missile launches and 35 rocket launches per year. The total number of annual launches would remain at 50.

As indicated above, this regulatory amendment does not change the analyses of marine mammal impacts conducted in the original final rule. This fact is assured and illustrated through:

(1) the USAF's submission of annual LOA requests for the activities at VAFB related to space vehicle and test flight activities; and (2) their annual submission of monitoring reports, which describe observed responses of marine mammals to USAF missile and rocket launches and aircraft activity collected via visual monitoring and acoustic recording methods. These submissions allow NMFS to accurately predict and track the USAF's activities to ensure that both NMFS' LOAs and the impacts of the USAF's activities on marine mammals remain within what is analyzed and authorized under the 5-year regulations.

Comments and Responses

On November 15, 2011 (76 FR 70695), NMFS published a proposed rule in response to requests by the Navy and USAF to allow for greater flexibility with respect to the regulations and LOAs permitting the types and amounts of sound sources that they use. In addition, the proposed rule responded to the Navy's request for LOAs with longer periods of validity (i.e., greater than one year). NMFS received comment letters from the Marine Mammal Commission, Department of the Interior, the U.S. Air Force, environmental non-governmental organizations, an interested member of the public, and one member of Congress. The comments are summarized and addressed below. Full copies of the comment letters may be accessed at <http://www.regulations.gov>. The letter from the Marine Mammal Commission can be accessed at http://mmc.gov/letters/letters_11.shtml, and recommended that NMFS amend the regulations as proposed.

Comment 1: NMFS should delay publishing the final rule until after NOAA's working group on marine mammal hotspots has completed its work.

Response: NMFS does not agree that delaying the publication of the final rule until after

the working groups have completed their work is warranted. The results of these working groups will be analyzed by NMFS in an adaptive management context, as related to the Navy final rules and LOAs, and mitigation or monitoring measures may be modified, as appropriate. The timing of potential adaptive management actions identified above would not be changed by delaying the publication of this final rule because LOAs can be modified at any time to include new mitigation or monitoring measures if new information suggests such a change is warranted.

Comment 2: NMFS has not properly assessed the impacts to marine mammals that could result from variability in the amount of source use within a five year period.

Response: As we stated in the preamble to the proposed rule (76 FR 70695, November 15, 2011), these regulatory amendments do not change the analyses of marine mammal impacts conducted in the original final rules. Under the revisions, any variations in sound types or use could not exceed the level of take authorized by the original rules, and individual LOA renewal applications will provide new take estimates for NMFS to review. New information, including results and recommendations from the working groups, would also be taken into consideration. In addition, the submission of annual monitoring and exercise reports by the Navy and USAF allow NMFS to accurately track the military readiness activities and ensure that LOAs issued by NMFS and the impacts of the military readiness activities on marine mammals remain within what is analyzed and authorized under the 5-year regulations.

Comment 3: NMFS must ensure that “similar sources” are truly similar and that the takings of marine mammals resulting from the use of “similar sources” do not exceed the takings that are authorized in the final rules.

Response: NMFS agrees and will evaluate the “similar sources” and their likely impacts

on marine mammals when the Navy submits their LOA applications, which include a detailed description of any new sources and a take estimate. NMFS will also review annual monitoring and exercise reports to ensure that takings from similar sources do not exceed those authorized in the final rules.

Comment 4: To maintain a commitment to oversight and adaptive management, NMFS must limit the taking of marine mammals to the annual take amount analyzed in the applicable EISs and final rules.

Response: NMFS' commitment to oversight and adaptive management is assured and illustrated through the review of annually submitted exercise and monitoring reports, which describe military readiness activities conducted during the reporting periods and observed responses of marine mammals to Navy training exercises and USAF missile and rocket launches and aircraft activity collected via visual monitoring and acoustic recording methods. Together, these submissions allow NMFS to accurately predict and track military readiness activities conducted by the Navy and USAF to ensure that incidental takings remain within what is analyzed and allowed under the 5-year regulations. In addition, NMFS continues to require annual adaptive management meetings with the Navy, which ensures that NMFS is able to evaluate the Navy's compliance and marine mammal impacts as carefully and as often as NMFS would in the absence of the modification. Finally, under the modified regulations, NMFS still has the ability to issue a new LOA at any time, pursuant to the adaptive management mechanism, if mitigation or monitoring modifications are needed.

Comment 5: The USAF requested that NMFS include language in the final rule that allows for the issuance of multi-year LOAs to the USAF for space vehicle and test flight

activities from VAFB.

Response: The USAF did not make this request to NMFS prior to release of the proposed rule for public comment. The current 5-year rule governing authorizations for take of marine mammals at VAFB expires on February 6, 2014. Therefore, if NMFS were to make this change now, it would make it unnecessary to issue only one remaining LOA, as three LOAs have already been issued to the USAF under the current regulations. NMFS did not include language authorizing LOAs that would cover multiple years for activities at VAFB, and including such language in the final rule would not result in significant time savings or administrative streamlining at this stage in implementation of the current 5-year regulations. Therefore, NMFS has not included language in the final rule for the USAF activities that would allow for the issuance of multi-year LOAs. However, if and when the USAF applies for new 5-year regulations, NMFS will consider issuance of multi-year LOAs in the proposed rule that is released for public comment at that time.

Comment 6: With respect to the interim final rule that amended the regulations governing take authorizations for JAX, VACAPES, and CHPT, the Marine Mammal Commission questioned whether it was necessary to waive the opportunity for public notice and comment, and recommended that NMFS take all steps possible to avoid invoking the good cause exception under similar circumstances.

Response: NMFS agrees with the Commission that a waiver of the opportunity for public notice and comment is only permissible in limited circumstances; that is, when the agency finds that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b)(B). In this case, NMFS determined that providing for notice and comment and

delaying the effective date of the interim final rule were both impracticable and contrary to the public interest, because the Navy had “a compelling need to continue its currently on-going military readiness and testing activities with the specific sound sources at issue without interruption.” Specifically, the Navy urgently needed to make multiple adjustments to the amount and type of explosives being used, and had an immediate need for more flexibility regarding the areas in which certain exercises could take place. As noted by the Commission, the Navy requested the amendment to the regulation several months before the interim final rule was issued. Given limited agency resources, the interim final rule was issued as soon as NMFS was able to perform the required analyses, and the Navy was simply unable to accommodate any further delay in issuance of the interim final rule in order to allow for notice and comment. As recommended by the Commission, NMFS provided an opportunity for public review and comment on all of the modifications that were subsequently proposed by NMFS for other Navy rules that did not require immediate implementation, and that are also codified in this final rule.

Classification

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. The RFA requires federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a federal agency may certify, pursuant to 5 U.S.C. 605 (b), that the action

will not have a significant economic impact on a substantial number of small entities. Neither the Navy nor the USAF are small governmental jurisdictions, small organizations, or small businesses, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy and USAF. NMFS does not expect the amendments of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action would directly affect the Navy and USAF and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effectiveness of the measures contained in the final rule. The Navy and USAF, as the authorized entities, have informed NMFS that any delay of enacting the final rule would result in: (1) A suspension of ongoing or planned military readiness activities, which would disrupt vital training essential to national security; or (2) the Navy and USAF's procedural non-compliance with the MMPA (should the Navy and USAF conduct activities without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, the Navy and USAF, the only parties directly affected by this rule, are ready to implement the rule immediately; therefore, these measures will become effective upon publication.

List of Subjects in 50 CFR Parts 216 and 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: January 20, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR parts 216 and 218 are amended as follows:

PART 216--REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE
MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq.

2. In § 216.120, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 216.120 Specified activity and specified geographical region.

(a) ***

(1) Launching up to 15 missiles each year from Vandenberg Air Force Base, for a total of up to 75 missiles over the 5-year period of the regulations in this subpart,

(2) Launching up to 35 rockets each year from Vandenberg Air Force Base, for a total of up to 175 rocket launches over the 5-year period of the regulations in this subpart,

3. Section 216.121 is revised to read as follows:

§ 216.121 Effective dates.

Amended regulations are effective from [insert date of publication in the Federal Register], through February 6, 2014.

4. In § 216.170, revise paragraphs (c) introductory text, (c)(1) introductory text, (c)(1)(vii), (c)(2) introductory text, (c)(2)(ii)(H), and (d) are as follows:

§ 216.170 Specified activity and specified geographical region.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training activities (estimated amounts below):

(vii) AN/SSQ-125 (AEER sonar sonobuoy) – 4800 sonobuoys (total, of IEER/EER and AEER combined) over the course of 5 years (an average of 960 per year)

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

(ii) ***

(H) EER/IEER - 4800 sonobuoys (total, of EER/IEER and AEER combined) over the

course of 5 years (an average of 960 sonobuoy deployments per year)

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 216.170(c) should the amounts (e.g., hours, dips, or number of exercises) vary from those estimated in § 216.170(c), provided that the variation does not result in exceeding the amount of take indicated in § 216.172(c).

5. In § 216.171, paragraph (a) is revised to read as follows:

§ 216.171 Effective dates and definitions.

(a) Amended regulations are effective from [insert date of publication in the Federal Register], through January 5, 2014.

6. In § 216.177, paragraph (a) is revised to read as follows:

§ 216.177 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.178 and the modification conditions in § 216.179.

7. In § 216.178, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 216.178 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 216.177 for the activity identified in § 216.170(c) may be renewed for an amount of time not to exceed the periods of validity of this subpart upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.176 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.174 and the Letter of Authorization issued under §§ 216.106 and 216.177, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

8. In § 216.240, revise paragraphs (c) introductory text and paragraph (d) to read as follows:

§ 216.240 Specified activity and specified geographical region

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources, explosive sonobuoys, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 216.240(c) should the amounts (e.g., hours, dips, or number of exercises) vary from those estimated in § 216.240(c), provided that the variation does not result in exceeding the amount of take indicated in § 216.242(c).

9. In § 216.241, paragraph (a) is revised to read as follows:

§ 216.241 Effective dates and definitions.

(a) Amended regulations are effective from [insert date of publication in the Federal Register], through January 22, 2014.

10. In § 216.247 paragraph (a) is revised to read as follows:

§ 216.247 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.248 and the modification conditions in § 216.249.

11. In § 216.248, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 216.248 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§ 216.106 and 216.247 for the activity identified in § 216.240(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.246 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.244 and the Letter of Authorization issued under §§ 216.106 and 216.247, were undertaken and will be undertaken during the upcoming period of validity of a renewed

Letter of Authorization.

12. In § 216.270, revise paragraphs (c) introductory text, (c)(1), (c)(2) and (d) to read as follows:

§ 216.270 Specified activity and specified geographical region

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 216.270(c) should the amounts (e.g., hours, dips, or number of exercises) vary from those estimated in § 216.270(c), provided that the variation does not result in exceeding the amount of take indicated in § 216.272(c).

13. In § 216.271, paragraph (a) is revised to read as follows:

§ 216.271 Effective dates and definitions.

(a) Amended regulations are effective from the date of publication of the final rule, through January 14, 2014.

14. In § 216.277, paragraph (a) is revised to read as follows:

§ 216.277 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.278 and the modification conditions in § 216.279.

15. In § 216.278, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 216.278 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §§ 216.106 and 216.277 for the activity identified in § 216.270(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.276 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.274 and the Letter of Authorization issued under §§ 216.106 and 216.277, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

PART 218--REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE
MAMMALS

16. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq.

17. In § 218.1, revise paragraphs (c) introductory text, (c)(1), (c)(1)(i)(D), (c)(1)(ii) introductory text, (d) and (e) to read as follows:

§ 218.1 Specified activity and specified geographical area and effective dates.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

(i)***

(D) Airborne Mine Neutralization system (AMNS)

(ii) Training events (with approximated number of events)

(d) Amended regulations are effective from [insert date of publication in the Federal Register], through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives or activities, listed in § 218.1(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.1(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.2(c).

18. In § 218.7, paragraph (a) is revised to read as follows:

§ 218.7 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.8 and the modification conditions in § 218.9.

19. In § 218.8, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.8 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.7 for the activity identified in § 218.1(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.6 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.4 and the Letter of Authorization issued under §216.106 of this chapter and § 218.7, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

20. In § 218.10, revise paragraphs (c) introductory text, (c)(1), (d) and (e) to read as follows:

§ 218.10 Specified activity and specified geographical area and effective dates.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

(d) Amended regulations are effective [insert date of publication in the Federal Register], through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.10(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.10(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.11(c).

21. In § 218.13, paragraph (a)(4)(i)(A) is revised to read as follows:

§ 218.13 Mitigation.

(A) This activity shall only occur in Areas BB and CC, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 216.11(c).

22. In § 218.16, paragraph (a) is revised to read as follows:

§ 218.16 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.17 and modification conditions in § 218.18.

23. In § 218.17, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.17 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.16 for the activity identified in § 218.10(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.15 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.13 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.16, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

24. In § 218.20, paragraphs (c) introductory text, (c)(1) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.20 Specified activity and specified geographical area and effective dates

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

(d) Regulations are effective [Insert date of publication in the Federal Register], through June 4, 2014.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.20(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.20(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.21(c).

25. In § 218.23, paragraph (a)(4)(i)(A) is revised to read as follows:

§ 218.23 Mitigation.

(a) ***

(4) ***

(i) ***

(A) This activity shall only occur in Areas 4/5 and 13/14, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 218.21(c).

26. In § 218.26, paragraph (a) is revised to read as follows:

§ 218.26 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.27 and the modification conditions in § 218.28.

27. In § 218.27, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.27 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.26 for the activity identified in § 218.20(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.25 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.23 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.26, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

28. In § 218.30, paragraphs (c) introductory text, (c)(1) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.30 Specified activity and specified geographical area and effective dates.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

(d) Regulations are effective [Insert date of publication in the Federal Register], through February 17, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.30(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.30(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.31(c).

29. In § 218.33, paragraph (a)(3)(i)(A) is revised to read as follows:

§ 218.33 Mitigation

(a) ***

(3) ***

(i) ***

(A) This activity shall only occur in the W-155A/B (hot box) area, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 218.31(c).

30. In § 218.36, paragraph (a) is revised to read as follows:

§ 218.36 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.37 and the modification conditions in § 218.38.

31. In § 218.37, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.37 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.36 for the activity identified in § 218.30(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.35 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.33 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.36, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

32. In § 218.100, paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2) introductory text are revised to read as follows:

§ 218.100 Specified activity and specified geographical area.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

33. Section 218.101 is revised to read as follows:

§ 218.101 Effective dates.

Amended regulations are effective [Insert date of publication in the Federal Register], through August 3, 2015.

34. In § 218.107, paragraph (a) is revised to read as follows:

§ 218.107 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.108 and the modification conditions in § 218.109.

35. In § 218.108, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as

follows:

§ 218.108 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.107 for the activity identified in § 218.100(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.106 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.104 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.107, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

36. In § 218.110, paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2) introductory text are revised to read as follows:

§ 218.110 Specified activity and specified geographical area.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

37. Section 218.111 is revised to read as follows:

§ 218.111 Effective dates.

Amended regulations are effective [Insert date of publication in the Federal Register], through November 9, 2015.

38. In § 218.117, paragraph (a) is revised to read as follows:

§ 218.117 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.118 and the modification conditions in § 218.119.

39. In § 218.118 paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.118 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.117 for the activity identified in § 218.110(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.116 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.114 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.117, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

40. Section 218.121 is revised to read as follow:

§ 218.121 Effective dates.

Amended regulations in this subpart are effective [Insert date of publication in the Federal Register], through May 4, 2016.

41. In § 218.127, paragraph (a) is revised to read as follows:

§ 218.127 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.128 and the modification conditions in § 218.129.

42. In § 218.128, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.128 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.127 for the activity identified in § 218.120(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.126 will be undertaken and that there will not be a substantial modification to the desired

work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.124 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.127, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

43. In § 218.170, paragraphs (c) introductory text and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.170 Specified activity and specified geographical area and effective dates.

(c) These regulations apply only to the taking of marine mammals by the Navy if it occurs incidental to the following activities, or similar activities, and sources, or similar sources (estimate amounts of use below):

(d) Amended regulations are effective [Insert date of publication in the Federal Register], through April 11, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 218.170(c) should the amounts (e.g., hours, number of exercises) vary from those estimated in § 218.170(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.171(c).

44. In § 218.176, paragraph (a) is revised to read as follows:

§ 218.176 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.177 and the modification conditions in § 218.178.

45. In § 218.177, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.177 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.176 for the activity identified in § 218.170(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.175 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.173 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.176, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

46. In § 218.180, paragraphs (c) introductory text, (c)(1) introductory text, (c)(2) introductory text, (c)(3) introductory text, (c)(4) introductory text, (c)(5) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.180 Specified activity and specified geographical area and effective dates.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy mission activities in territorial waters (estimated amounts below):

(2) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy mission activities in non-territorial waters (estimated amounts below):

(3) Ordnance operations, or similar operations, for Navy mission activities in territorial waters (estimated amounts below):

(4) Ordnance operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

(5) Projectile firing operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

(d) Amended regulations are effective [Insert date of publication in the Federal Register], through January 21, 2015.

(e) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 218.180(c) should the amounts (e.g., hours, number of exercises) vary from those estimated in § 218.180(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.181(b).

47. In § 218.186, paragraph (a) is revised to read as follows:

§ 218.186 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.187 and the modification conditions in § 218.188.

48. In § 218.187 paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.187 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.186 for the activity identified in § 218.180(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.185 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.183 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.186, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

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